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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No. 159

J. R. MASON,
Petitioner,

vs.

MERCED IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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J. R. MASON,
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vs.
MERCED IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioner J. R. Mason prays that a writ of certiorari issue to review the decision (R. 51) of the Circuit Court of Appeals for the Ninth Circuit made in the above entitled cause on March 21, 1942, which affirmed the final decree of the District Court for the

Southern District of California, Northern Division, rendered against petitioner and others on July 15, 1941 (R. 51, 54).

OPINION BELOW.

Opinion of the Circuit Court of Appeals, 126 Fed. (2d) 920.

JURISDICTION.

A decision of the Circuit Court of Appeals was rendered March 21, 1942 (R. 78). The mandate was stayed until disposition of the case by this court (R. 82). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code. (28 U.S.C. Sec. 347 (a)).

STATUTES INVOLVED.

Municipality Bankruptcy Act of May 24, 1934, c. 345 (48 Stat. 798), 11 U.S.C. 301-303, adding Sections 78-80 to the Bankruptcy Act of 1898; Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U.S.C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Sec. 3 (b) (52 Stat. 940). Principal California statutes involved are "the California Irrigation District Act", Cal. Stat. 1897, p. 254, as amended; the "California Districts Securities Commission Act", Cal. Stat. 1931, p. 2263, as amended.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding brought by the respondent, Merced Irrigation District, a California Irrigation District, for composition of debts under Chapter IX of the Bankruptcy Act of 1898 as amended (11 U.S.C. Secs. 401-404).

The Merced Irrigation District, herein referred to as "the district", is an instrumentality and arm of the State of California, exercising exclusively governmental functions. *Anderson-Cottonwood I. D. v. Klukkert,* 13 Cal. (2d) 191, 88 Pac. (2d) 685. The district was formed under the provisions of Cal. Stats. 1897, p. 254, as amended, and is situated in the County of Merced, State of California.

Theretofore, to-wit, on June 17, 1938, a petition of the district for interlocutory decree approving its plan of composition under the terms of the Bankruptcy Act relating to the composition of indebtedness of local taxing agencies was filed, and on February 21, 1939, an interlocutory decree confirming the plan of composition was entered (R. 25). Thereafter an appeal was taken to the United States Circuit Court of Appeals, which was thereafter affirmed by the Circuit Court of Appeals on September 5, 1940 (R. 24, 25, 1, 3) (114 F.(2d) 654). Thereafter the appellants therein petitioned the United States Supreme Court for a writ of certiorari, which was denied by the U. S. Supreme Court on January 6, 1941 (312 U. S. 714). By said interlocutory decree it was provided that the petitioner should make available 51.501 cents on each dollar of unpaid principal of its bonded in-

debtedness, which amount is $16,190,000 (R. 26). The district subsequently made funds available therefor and applied to the District Court for a final decree (R. 32). There is no question about the district having deposited the funds as provided by the interlocutory decree. Petitioner objected to the entry of the final decree. The District Court none the less entered its final decree (R. 51, 54) providing amongst other things that petitioner, Merced Irrigation District, respondent herein, is discharged from all debts and liabilities dealt with in the plan of composition (R. 54) and restraining petitioner herein from asserting any claim or demands against petitioner district or its officers or against the property situated therein or the owners thereof (R. 53). The appeal was taken from the final decree.

By proper specification of error and statement of points, the petitioner J. R. Mason sought a reversal of the decree (R. 58, 72); thereby amongst other things respondent charged that the decree interferes with the governmental and political powers and duties of the respondent and violates the Constitution of the United States and of the State of California, in that respect (R. 59, 72).

QUESTIONS PRESENTED.

1. Where bonds issued by a political entity are not based on a trust deed which provides for modification of the terms of the bonds by the vote of a majority of bondholders, and where the rights of one bondholder

cannot be changed, even by the consent of all bondholders save that one, as the State Court has squarely held (*Selby v. Oakdale I. D.,* 140 Cal. App. 171, 35 P. (2d) 125) can his property be taken because other bondholders voluntarily elected seven years ago to accept a compromise cash offer rather than await the ultimate full payment of their claims?

2. Since this Court decree *discharges* respondent from its lawful duty to levy taxes adequate to meet its contractual obligations, must it not also be that the Court can now exercise its equitable powers to compel this or some other governmental agency of a State, or the State itself to levy an *ad valorem tax* on land in excess of the rate provided by law, although this is in direct conflict with the rule established in *Thompson v. Allen County,* 155 U.S. 550, and *Ohio Life Ins. Co. v. Debolt,* 16 How. 415?

3. Since it has been steadfastly adhered to by this Court that a federal tax on the interest received from bonds similar to those in the case at bar, is prohibited as a burden upon or interference with the State's borrowing power, must it not be held that a decree by any Federal Court discharging respondent from its continuing and irrevocable contract to levy annually taxes on the value of land until all contracts are fulfilled equally constitutes an "interference" with the State's borrowing power, which "interference" is we submit, explicitly prohibited in the Act itself?

4. In view of the *International Shoe Co. v. Pinkus,* 287 U. S. 261, 265, case, holding that the bankruptcy

power is "unrestricted and paramount" and that the States "may not pass or enforce laws to interfere with or complement the bankruptcy act or to provide additional or auxiliary regulations", if the decree here questioned stands, will any State be able to borrow money upon the pledge of the exercise of its taxing power, confided to one of its agencies, free from the power of a bankruptcy Court to interfere with the contract and even to declare it fully satisfied upon payment of a mere fraction of the contract, as the final decree here does?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

(1) In its *Faitoute Iron & Steel Co. v. City of Asbury Park* decision of June 1, 1942, this Court ruled that "The bankruptcy power is exercised * * * only in a case where the action of the taxing agency in carrying out a plan of composition approved by the bankruptcy court is authorized by state law", thus re-affirming the doctrine of immunity, but leaving undetermined the question of whether Chapter IX, being subject to state laws which could "interfere with or complement the bankruptcy act or to provide additional or auxiliary regulations" (*Int. Shoe Co. v. Pinkus,* supra) is still a "uniform law on the subject of bankruptcy throughout the United States", and also leaving unresolved whether an ex post facto State consent act, as in the case of Cal. Stat. 1939, Chap. 72, can be effective without impinging subdivision 1, Sec. 10, Article I of the Constitution. Nothing said in the *U. S. v. Bekins* case re-

pudiated the following from the *Ashton* case (298 U. S. 513): "Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted".

Further, this Honorable Court in the case of *Utah v. Harkness,* decided April 27, 1942, explicitly enumerated the three respects in which the state taxing power is limited, but did not suggest that the bankruptcy clause is among them. These questions of law badly need resolving by the one Court that speaks for the entire Nation.

(2) This Court, we submit, should indicate whether the judgment dismissing the petition filed by respondent under the original Chap. IX of the Bankruptcy Act (58 S. Ct. 30), and which sought approval of the precise "plan" as in the instant case, and petitioner was a party opposing the first petition, is *res judicata* as between the same parties here, under the rule declared in *Chicot County Dr. Dist. v. Baxter State Bank,* 308 U. S. 371.

(3) The decision below is in direct conflict with that of the Circuit Court of Appeals of the Eighth Circuit in *Spellings v. Dewey,* 122 F.(2d) 652.

The following decisions are in direct conflict with the decision of this Court on June 1, 1942 in the case of *Faitoute v. Asbury Park,* where it is said, that the amended Chapter IX "was carefully circumscribed to reserve full freedom to the states":

In re Summer Lake I. D., 33 F. Supp. 504;
In re S. Beardstown Dr. Dist., 125 F.(2d) 13.

Wherefore, petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and to send to this Court for its review and determination a full and complete transcript of the record and of the proceedings of said Court in the case numbered and entitled in its dockets as "No. 9955, J. R. Mason, Appellant, vs. Merced Irrigation District, Appellee", and that the decree of said Court be reversed by this Court with directions to dismiss the bill, and for such other relief as to this Court may seem proper.

Dated, San Francisco, California,
June 12, 1942.

J. R. MASON,
Petitioner.

GEORGE THOMAS DAVIS,
Counsel for Petitioner.